

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

MICHAEL DEVEL WHITENER,

Petitioner,

v.

CAUSE NO. 3:22-CV-31-JD-MGG

WARDEN,

Respondent.

OPINION AND ORDER

Michael Devel Whitener, a prisoner without a lawyer, filed a habeas corpus petition challenging the disciplinary decision (ISP-21-6-424) at the Indiana State Prison in which a disciplinary hearing officer (DHO) found him guilty of possessing a cellular device in violation of Indiana Department of Correction Offense 121. Following a hearing, he was sanctioned with the loss of thirty days credit time and demotion in credit class, but these sanctions were suspended and have not been imposed. Pursuant to Section 2254 Habeas Corpus Rule 4, the court must dismiss the petition “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.”

“[A] habeas corpus petition must attack the fact or duration of one’s sentence; if it does not, it does not state a proper basis for relief under § 2254.” *Washington v. Smith*, 564 F.3d 1350, 1351 (7th Cir. 2009). The loss of earned credit time and demotion in credit class sanctions were suspended and have not been imposed, so these sanctions did not

affect the fact or duration of Whitener's sentence. Because Whitener's claims do not relate to the fact or duration of his sentence, the court cannot grant him habeas relief.

If Whitener wants to appeal this decision, he does not need a certificate of appealability because he is challenging a prison disciplinary proceeding. *See Evans v. Circuit Court*, 569 F.3d 665, 666 (7th Cir. 2009). However, he may not proceed in forma pauperis on appeal because the court finds pursuant to 28 U.S.C. § 1915(a)(3) that an appeal in this case could not be taken in good faith.

For these reasons, the court:

- (1) DENIES the habeas corpus petition (ECF 1);
- (2) DIRECTS the clerk to enter judgment and close this case; and
- (3) DENIES Michael Devel Whitener leave to proceed in forma pauperis on appeal.

SO ORDERED on January 24, 2022

/s/JON E. DEGUILIO
CHIEF JUDGE
UNITED STATES DISTRICT COURT